IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 10, 2007 Session

DISCOVER BANK v. VIENCE McCULLOUGH ET AL.

Appeal from the Circuit Court for Williamson County
No. 05707 R.E. Lee Davies, Judge

No. M2006-01272-COA-R3-CV - Filed January 29, 2008

This appeal involves a dispute between the holders and the issuer of a bank card regarding an $8,549.01 unpaid balance. This straightforward collection case has been complicated by the cardholders' decision to represent themselves and by the inattentiveness of the issuer's lawyer. The issuer of the card filed suit in the Williamson County General Sessions Court seeking to recover the unpaid balance. The cardholders, representing themselves, mailed a response to the general sessions court but failed to appear at the hearing specified in the summons. Accordingly, on July 11, 2005, the general sessions court entered an $8,838.27 default judgment against the cardholders. The cardholders filed many other unintelligible papers in the general sessions court, including a "writ of praecipe." On November 9, 2005, after the general session courts declined to grant them relief, the cardholders filed a notice of appeal to the Circuit Court for Williamson County. The issuer of the bank card filed a motion requesting the circuit court to dismiss the de novo appeal because it was not timely filed. After the issuer's lawyer failed to appear for several hearings, the circuit court vacated the July 11, 2005 default judgment. On this appeal, the issuer of the card asserts that the circuit court lacked subject matter jurisdiction over the cardholders' de novo appeal because the appeal was not perfected within ten days following the entry of the default judgment. The cardholders insist that their de novo appeal was timely because it was filed within ten days after the entry of the general sessions court's order denying the "writ of praecipe." We have determined that the cardholders failed to perfect a timely de novo appeal from the default judgment and, therefore, that the circuit court lacked subject matter jurisdiction over this case. Accordingly, we reverse the circuit court's orders vacating the July 11, 2005 default judgment and remand the case with directions to dismiss the cardholders' de novo appeal.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed and Remanded

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

John M. Richardson, Jr. and Steven T. Richardson, Clarksville, Tennessee, for the appellant, Discover Bank.

Dwight G. McQuirter, Spring Hill, Tennessee, for the appellees, Vience McCullough and Sharon McCullough.

OPINION

I.

On April 22, 2005, Discover Bank filed suit in the Williamson County General Sessions Court against Vience M. McCullough and Sharon E. McCullough seeking to recover an unpaid bank card balance of $8,549.01 plus costs. The summons, which stated that the case would be heard on July 11, 2005, was served on the McCulloughs on May 4, 2005. It notified them that failure to appear at the hearing would "result in judgment by default being rendered against you for the relief requested."

The McCulloughs decided to represent themselves. On May 26, 2005, they mailed a "Notice" to the general sessions court in response to the summons. While the document is extremely difficult to comprehend, it appears to be a denial of the McCulloughs' responsibility to pay the outstanding balance on their Discover Card because they had returned the card to the bank and because the bank should be required to take further action to "validate" their debt.[1] The document did not request a continuance of the July 11, 2005 hearing, nor did it contain any indication that the McCulloughs would be unable, for any reason, to attend the hearing. When the McCulloughs did not appear at the July 11, 2005 hearing, the general sessions court granted a $8,838.27 default judgment to Discover Bank.

On July 15, 2005, four days following the entry of the default judgment against them, the McCulloughs mailed another copy of their "Notice" to the general sessions court demanding that the clerk of the general sessions court provide them with a copy of the "Notice" showing that it had been received.[2] On July 21, 2005 the McCulloughs mailed a document they called a "writ of praecipe" to the general sessions court in which they "commanded [the general sessions court] to enter a default [judgment] against plaintiff" and "to dismiss this case."

On August 26, 2005, the McCulloughs filed additional documents unknown to the practice in general sessions court.[3] While these documents reflected their awareness that the July 11, 2005 hearing had been held and that the default judgment had been entered, the McCulloughs provided no reasons for their failure to attend the hearing. The documents simply argued the merits of the McCulloughs' claim that they should not be required to repay the outstanding balance on their Discover Card.

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[1] As an example of their reasons for refusing to pay the outstanding balance on their bank card, the McCulloughs assert that the credit card contract is with "VIENCE M. MCCULLOUGH and SHARON E. MCCULLOUGH" and that the McCulloughs do not write their names using only capital letters.

[2] Mr. McCullough explained in their letter that he was "sending this . . . notice to the courts for a second time . . . The notice was never mark[ed] as received and file[d] before the court date, which was on July 11, 2005. Therefore this has denied me due process under the law by the courts. . . . I am asking that [the] General Session Clerk . . . send me back a copy of the notice stamp[ed] as received . . .."

[3] These documents included: a "Common Law Complaint Demanding Validation of Debt," a third copy of the "Notice" that had been previously mailed to the court, and a "Notice of Rescission, Surrender and Termination of Fiduciary Responsibility." The McCulloughs also submitted a revised version of the "Notice" that included a section entitled "motion to vacate" in which they argued that "[t]he previous order in the instant suit should be vacated and all property belonging to Defendant should be returned, with interest."

In response to all the McCulloughs' papers, the general sessions court ordered the parties to attend a mandatory settlement conference on October 25, 2005 and set a hearing for February 13, 2006, on the "motion to vacate" contained in the McCulloughs' revised "Notice." The general sessions court denied the McCulloughs' "writ of praecipe" on October 31, 2005. This action prompted the McCulloughs to file more papers. On November 9, 2005, they filed (1) a third version of their "Notice," (2) a motion for declaratory judgment, and (3) a notice of appeal seeking a de novo appeal from the denial of their "writ of praecipe." On December 19, 2005, Discover Bank filed a response requesting that the McCulloughs' motions to amend and for declaratory judgment be dismissed. The McCulloughs filed an amended notice of appeal on January 5, 2006.

The Circuit Court for Williamson County set a hearing on the McCulloughs' appeal from the general sessions court for January 9, 2006. The McCulloughs attended the hearing, but Discover Bank did not. The court reset the hearing for January 23, 2006 and noted that "[f]ailure to appear at said hearing will result in dismissal of the case." Discover Bank moved for a continuance based on short notice and conflicts in its lawyer's schedule. The trial court proceeded with the January 23, 2006 hearing without addressing the motion for continuance and on January 26, 2006 entered an order dismissing Discover Bank's complaint with prejudice.

On January 30, 2006, Discover Bank filed a motion in the trial court to set aside the January 26, 2006 order dismissing its suit against the McCulloughs. Noting all the deficiencies in the papers that the McCulloughs had filed in the general sessions court, the bank asserted that the trial court lacked subject matter jurisdiction over the de novo appeal because the McCulloughs had failed to file their notice of appeal within ten days following the entry of the default judgment as required by Tenn. Code Ann. § 27-5-108(a)(1) (Supp. 2007). On March 6, 2006, the McCulloughs filed a response to the bank's motion in which they argued that they had requested collateral relief from the July 11, 2005 order in their "writ of praecipe" and that their notice of appeal was timely because they filed it within ten days after the October 31, 2005 order denying the writ. Again, the McCulloughs' papers did not offer any reason or justification for their failure to appear at the July 11, 2005 hearing.

The hearing on Discover Bank's motion to set aside the January 26, 2006 order was rescheduled at the request of the bank's lawyer. When neither the bank nor its lawyer appeared at the March 20, 2006 hearing, the trial court entered an order on May 12, 2006 denying the bank's motion to set aside the January 26, 2006 order. After Discover Bank filed a timely notice of appeal, the McCulloughs retained a lawyer to assist them with the appeal.

II.
THE CONSTRUCTION OF PAPERS PREPARED BY SELF-REPRESENTED LITIGANTS

Self-represented litigants are entitled to fair and equal treatment by the courts. *Hessmer v. Miranda*, 138 S.W.3d 241, 244 (Tenn. Ct. App. 2003). In Tennessee, trial courts are expected to appreciate and be understanding of the difficulties encountered by a party who is embarking into the maze of the judicial process with no experience or formal training. *Whalum v. Marshall*, 224 S.W.3d 169, 179 (Tenn. Ct. App. 2006); *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988). Thus, courts are expected to take into account that many self-represented litigants have no legal training and are unfamiliar with judicial procedures. *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003).

Accordingly, Tennessee's courts should give self-represented litigants who have no legal training a certain amount of leeway in drafting their pleadings, motions, and other papers. *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003); *Nash v. Waynick*, No. M2000-02096-COA-R3-CV, 2001 WL 360703, at *3 (Tenn. Ct. App. Apr. 12, 2001) (No Tenn. R. App. P. 11 application filed). They should measure the papers prepared by self-represented litigants using standards that are less stringent than those applied to papers prepared by lawyers. *C & W Asset Acquisition, LLC v. Oggs*, 230 S.W.3d 671, 678 (Tenn. Ct. App. 2007); *Hessmer v. Hessmer*, 138 S.W.3d at 903.

Courts, however, must also be mindful of the boundary between fairness to a self-represented litigant and unfairness to that litigant's adversary. *Whalum v. Marshall*, 224 S.W.3d at 179 ; *Young v. Barrow*, 130 S.W.3d at 63. Courts may not excuse self-represented litigants from complying with the same substantive and procedural rules that represented parties are expected to observe. *Slone v. Mitchell*, 205 S.W.3d 469, 473 (Tenn. Ct. App. 2005); *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App.1996); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n. 4 (Tenn. Ct. App. 1995). Accordingly, self-represented litigants "must act within the time periods provided by the applicable statutes and rules in order to have their cases considered." *Grigsby v. Univ. of Tenn. Med. Ctr.*, No. E2005-01099-COA-R3-CV, 2006 WL 408053, at *3 (Tenn. Ct. App. Feb. 22, 2006) (No Tenn. R. App. P. 11 application filed); *Goad v. Pasipanodya*, No. 01A01-9509-CV-00426, 1997 WL 749462, at *2 (Tenn. Ct. App. Dec. 5, 1997) (No Tenn. R. App. P. 11 application filed). Simply stated, "[a]lthough . . . [self-represented] parties are afforded a liberal interpretation of their pleadings and briefs before our courts, this liberal construction cannot create rights where none exist." *Ellis v. Bacon*, No. M2005-00222-COA-R3-CV, 2005 WL 3115917, at *2 (Tenn. Ct. App. Nov. 21, 2005) (No Tenn. R. App. P. 11 application filed).

The line between appropriate indulgence of a self-represented litigant's shortcomings and unfairness to the self-represented litigant's adversary, although fine, must be maintained. Accordingly, the courts should not permit self-represented litigants to shift the burden of litigating their case to the courts or to their adversaries. *Wilkerson v. Ekelem*, No. M2002-00841-COA-R3-CV, 2004 WL 578600, at *2 (Tenn. Ct. App. Mar. 24, 2004) (No Tenn. R. App. P. 11 application filed); *Hessmer v. Miranda*, 138 S.W.3d at 245. While courts should liberally construe a self-represented litigant's papers to give effect to their substance rather than their form, they should not manufacture or create a claim, defense, or argument that cannot reasonably be found in the document. *See e.g.*, *MBNA Am. Bank, N.A. v. Baker*, No. M2004-02239-COA-R3-CV, 2007 WL 3443600, at *3 (Tenn. Ct. App. Nov. 15, 2007); *Hessmer v. Hessmer*, 138 S.W.3d at 904; *Percy v. Tenn. Dep't of Corr.*, No. M2001-01629-COA-R3-CV, 2003 WL 535919, at *4 (Tenn. Ct. App. Feb. 26, 2003) (No Tenn. R. App. P. 11 application filed). Absent some basis from which a court can reasonably construe the pleading in such a manner, a liberal construction alone will not create a pleading, defense, or claim. *See In re Estate of Russell*, No. E2004-00765-COA-R3-CV, 2005 WL 1390003, at *5 (Tenn. Ct. App. June 14, 2005) (No Tenn. R. App. P. 11 application filed).

Courts must maintain their ethical equilibrium by managing the tension that exists between smoothing bumps in the litigation process for a self-represented litigant and their responsibility to

remain impartial.[4] Where a trial court strays beyond liberal construction into the realm of creating and manufacturing claims and defenses that simply do not exist in the self-represented litigant's pleadings, it has improperly abdicated its role as an impartial, neutral arbiter and instead has become an advocate for the self-represented litigant. *See In re Estate of Russell*, 2005 WL 1390003, at *5; *see also e.g.*, *New Tech. Advantage v. Petruzelli*, No. C07-5240RBL, 2007 WL 2012403, at *6 (W.D. Wash. July 6, 2007); *Tyler v. Harper*, 670 S.W.2d 14, 16 (Mo. Ct. App. 1984); *Fraisar v. Gillis*, 892 A.2d 74, 76- 77 (Pa. Commw. Ct. 2006).

III.
THE MCCULLOUGHS' DE NOVO APPEAL

The pivotal issue on this appeal is whether the trial court had subject matter jurisdiction over the McCulloughs' de novo appeal from the July 11, 2005 order. Discover Bank asserts that the trial court lacked subject matter jurisdiction because the McCulloughs failed to file a notice of appeal within the time prescribed by Tenn. Code Ann. § 27-5-108(a)(1). In response, the McCulloughs, asserting that the filings of self-represented litigants should be liberally construed, insist that the filing of their "writ of praecipe" on July 21, 2005 constituted compliance with Tenn. Code Ann. § 27-5-108(a)(1). We have concluded that the trial court lacked subject matter jurisdiction over the McCulloughs' de novo appeal and, therefore, that its January 26, 2006 and May 12, 2006 orders must be reversed and the de novo appeal must be dismissed.

A.

Tenn. Code Ann. § 27-5-108(a)(1) provides with unmistakable clarity that "[a]ny party may appeal from an adverse decision of the general sessions court to the circuit court of the county within a period of ten (10) days on complying with the provisions of this chapter." Perfecting a de novo appeal within this statutory time limit "is no mere technical formality: it is in fact a mandatory requirement, and if it is not complied with the court has no jurisdiction over the case." *Love v. Coll. Level Assessment Servs., Inc.*, 928 S.W.2d 36, 38 (Tenn. 1996). Thus, unless a party perfects its de novo appeal within ten days from the date of the judgment, the circuit court does not obtain jurisdiction over the appeal. *Metro. Gov't., Nashville & Davidson County v. Marceaux*, No. M2003-00876-COA-R3-CV, 2004 WL 115174, at *1 (Tenn. Ct. App. Jan. 23, 2004) *perm. app. dismissed* (Tenn. Mar. 31, 2003) ("The ten-day time period for appeal is jurisdictional."); *Vanderbilt Univ. v. Haynes*, No. M2001-02688- COA-R3-CV, 2003 WL 239819, at *1 (Tenn. Ct. App. Feb.

[4] *Austin v. Ellis*, 119 N.H. 741, 743, 408 A.2d 784, 785 (1979) (noting that "[t]he court's essential function to serve as an impartial referee comes into direct conflict with the concomitant necessity that the pro se litigant's case be fully and competently presented."); Brenda Star Adams, Note, *"Unbundled Legal Services:" A Solution to the Problems Caused by Pro Se Litigation in Massachusetts's Civil Courts*, 40 New Eng. L. Rev. 303, 306-08 (2005); Thomas H. Boyd, *Minnesota's Pro Bono Appellate Program: A Simple Approach That Achieves Important Objectives*, 6 J. App. Prac. & Process 295, 299-300 (2004); Carolyn D. Schwarz, Note, *Pro Se Divorce Litigants: Frustrating the Traditional Role of the Trial Court Judge and Court Personnel*, 42 Fam. Ct. Rev. 655, 657-58 (2004); Drew A. Swank, *In Defense of Rules and Roles: The Need to Curb Extreme Forms of Pro Se Assistance and Accommodation in Litigation*, 54 Am. U. L. Rev. 1537, 1583-94 (2005).

4, 2003) (No Tenn. R. App. P. 11 application filed) ("A timely appeal is a mandatory requirement without which the Circuit Court does not obtain jurisdiction.").[5]

B.

The McCulloughs assert that their "writ of praecipe" should be construed as a timely notice of appeal for the purpose of complying with Tenn. Code Ann. § 27-5-108(a)(1) because it was filed within ten days after the entry of the July 11, 2005 order granting Discover Bank's default judgment. We begin by examining the form and terminology of the writ to determine whether it supports the McCulloughs' contentions.

The writ of praecipe is not part of current legal proceedings in Tennessee's courts and is essentially unknown in Tennessee jurisprudence.[6] It is a common-law writ[7] that either orders a defendant to do some act or to explain why inaction is appropriate[8] or (2) requests some action by a court, most commonly setting a trial or entering a judgment. Blackstone, 3 Commentaries * 274; Black's Law Dictionary 1211 (8th ed. 2004); James E. Pfander, *Marbury, Original Jurisdiction, and the Supreme Court's Supervisory Powers*, 101 Colum. L. Rev. 1515, 1527 n.44 (2001). While the writ has been associated with appeals in other jurisdictions,[9] it has never been associated with appeals in Tennessee.

The body of the "writ of praecipe" prepared by the McCulloughs contains no direct reference or allusion to an appeal of any sort. In addition, because this writ has never been part of appellate practice in Tennessee's courts, there is no basis to conclude that courts or lawyers in Tennessee

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[5] *See also e.g., Watkins v. Fitzgerald*, No. M2000-03197-COA-R3-CV, 2002 WL 31662404, at *2 (Tenn. Ct. App. Nov. 26, 2002) (No Tenn. R. App. P. 11 application filed); *Henry Schein, Inc. v. Watts*, No. E1999-02128-COA-R3-CV, 2000 WL 222537, at *2 (Tenn. Ct. App. Feb. 28, 2000) (No Tenn. R. App. P. 11 application filed).

[6] The writ is mentioned in passing in three cases decided between 1823 and 1836, *Shields v. Mitchell*, 18 Tenn. (10 Yer.) 1, 9 (1836); *Pinson v. Ivey*, 9 Tenn. (1 Yer.) 296, 326 (1830); *Porter's Lessee v. Cocke*, 7 Tenn. (1 Peck) 29, 44 (1823), none of these references reflects that it was part of any sort of appellate process.

[7] Some have theorized that the writ of praecipe emerged from an effort to avoid the jurisdiction of the feudal baronial courts in favor of the King's courts by providing a means of returning control over disputed land through enforcement by the King's sheriff. Jack Moser, *The Secularization of Equity: Ancient Religious Origins, Feudal Christian Influences, and Medieval Authoritarian Impacts on the Evolution of Legal Equitable Remedies*, 26 Cap. U. L. Rev. 483, 529 & n. 237 (1997); Ken Pennington, Select Writs - Beginning With Those Relating to Land, available at http://faculty.cua.edu/Pennington/KrakowLectures/Law508/EnglishWrits.html#Praecipe (last visited Jan. 14, 2008).

[8] Blackstone explains that the writ may be used to demand something certain that the defendant is obligated to perform such as "to restore the possession of land, to pay a certain liquidated debt, to perform a specific covenant, to render an account, and the like." William Blackstone, 3 Commentaries * 274 ("Blackstone").

[9] For example, the writ of praecipe was at one time used in Delaware in a manner similar to our notice of appeal. However, on facts similar to those in this case, the Supreme Court of Delaware held that the letter requesting an appeal that was not accompanied by a bond for costs could not be considered a praecipe that would initiate an appeal. *Casey v. Southern Corp.*, 29 A.2d 174, 175-78 (Del. 1942).

would have commonly understood that a "writ of praecipe" was functionally the same as a notice of appeal.

We next consider the substance of the McCulloughs' "writ of praecipe," using the forgiving standard of construction applied to pleadings prepared by self-represented litigants, to determine whether it can reasonably be interpreted as a notice of appeal. The writ states:

> This writ is being filed under special appearance.
>
> Please take notice that the judge in the instant case is hereby commanded to enter a default against plaintiff for failure to controvert the facts presented by the undersigned in the judicial notice previously filed with the instant court on behalf of the defendant.
>
> The instant judge is further commanded to dismiss this case, with prejudice, pursuant to the rules of common law and due process.
>
> The instant judge is further commanded to furnish a detailed finding of facts and conclusions of law for its refusal to comply.

There is nothing in this language that suggests a desire to appeal or even an objection to the entry of the default judgment. In fact, there is no reference to the July 11, 2005 default judgment. Even applying a liberal construction, we cannot read an intention or desire to appeal into this document. Accordingly, there is nothing in either the substance, form, or terminology of the McCulloughs' "writ of praecipe" from which a court could reasonably infer that the McCulloughs' writ amounts to a notice of appeal from the default judgment entered on July 11, 2005.

In addition to the substantive shortcomings in their "writ of praecipe," the McCulloughs' assertion they perfected a de novo appeal from the July 11, 2005 default judgment simply by filing their writ overlooks the fact that the timely filing of a notice of appeal is not the only prerequisite for perfecting a de novo appeal to circuit court from the general sessions court. Persons desiring a de novo appeal must also file a cost bond or an affidavit of indigency. Tenn. Code Ann. § 20-12-127 (1994); Tenn. Code Ann. § 27-5-103 (2000); 1 Lawrence A. Pivnick, *Tennessee Circuit Court Practice* § 3.11 at 261-62 & n.8 (2007). A de novo appeal to circuit court is perfected only after both the notice of appeal and the appeal bond or affidavit of indigency has been filed. *Clay v. Barrington Motor Sales, Inc.*, 832 S.W.2d 33, 34 (Tenn. Ct. App. 1992); *cf. City of Tullahoma v. Woods*, No. 01A01-9106-CV-00201, 1991 WL 181853, at *1-2 (Tenn. Ct. App. Sept. 18, 1991).

We have already concluded that the McCulloughs' "writ of praecipe" is not the functional equivalent of a notice of appeal. We now find, after carefully reviewing the record, that the McCulloughs did not file either an appeal bond or affidavit of indigency when they filed their "writ of praecipe." The courts cannot excuse the McCulloughs or any other self-represented litigant from complying with this mandatory requirement. Accordingly, the only conclusions to be drawn from the undisputed facts in this case are (1) that the McCulloughs did not perfect a timely de novo appeal from the July 11, 2005 default judgment and, therefore, (2) that the trial court never acquired subject

matter jurisdiction over this case. *See e.g., Metro. Gov't., Nashville and Davidson County v. Marceaux*, 2004 WL 115174, at *1; *Vanderbilt Univ. v. Haynes*, 2003 WL 239819, at *1.

IV.
THE TRIAL COURT'S JURISDICTION TO REVIEW THE "DENIAL" OF THE MCCULLOUGHS' MOTION TO VACATE

In addition to their argument that their "writ of praecipe" was sufficient to give the trial court subject matter jurisdiction over their de novo appeal from the July 11, 2005 default judgment, the McCulloughs assert that the trial court somehow acquired jurisdiction to review the general sessions court's denial of their "Rule 60" motion. We find two flaws in this argument. First, the general sessions court, at least as far as the appellate record shows, did not deny the McCulloughs' "Rule 60" motion. Second, the trial court had no authority to take any action in this case because it never acquired subject matter jurisdiction.

A.

The second version of the "Notice" that the McCulloughs filed on August 26, 2005 in the general sessions court contains a section entitled "MOTION TO VACATE" in which they assert that "[t]he previous order in the instant suit should be vacated and all property belonging to Defendant should be returned, with interest." When the general sessions court discovered that the McCulloughs had failed to serve a copy of this document on Discover Bank, it ordered that the bank be served with the paper and set a hearing on the motion for February 13, 2006.

Prior to this hearing, the general sessions court denied the McCulloughs' "writ of praecipe," and the McCulloughs elected to pursue a de novo appeal to the circuit court from the denial of their writ. From that point on, at least as far as the record on appeal shows, the McCulloughs focused their energies on the proceeding in the circuit court rather than the pending proceeding in the general sessions court. Accordingly, the record does not reflect that the general sessions court ever ruled on the "Rule 60" motion or that the McCulloughs ever requested the general sessions court to rule on their motion.

We note first that the substance of the papers the McCulloughs filed on August 26, 2005 is essentially the same as the substance of their "writ of praecipe." Nothing in these papers explicitly states or can reasonably be construed as a motion seeking the sort of Rule 60 relief that general sessions courts at that particular time were permitted to grant. Thus, we have no basis, even using the rules of construction favoring self-represented litigants, to construe the McCulloughs' August 26, 2005 papers as a motion seeking Rule 60 relief. Second, we also note that the McCulloughs elected to pursue the denial of their "writ of praecipe" in the circuit court without ever requesting the general sessions court to rule on their "motion to vacate." Thus, this record provides no basis for their assertion that the general sessions court denied their motion. If anything, the record supports a conclusion that the McCulloughs abandoned it.

B.

The concept of subject matter jurisdiction involves a court's power to adjudicate a particular type of case or controversy. *Toms v. Toms*, 98 S.W.3d 140, 143 (Tenn. 2003); *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000); *Staats v. McKinnon*, 206 S.W.3d 532, 541-42 (Tenn. Ct. App. 2006). A court derives its subject matter jurisdiction, either explicitly or by necessary implication, from the Constitution of Tennessee or from legislative act. *Smallwood v. Mann*, 205 S.W.3d 358, 364 (Tenn. 2006); *Meighan v. U.S. Sprint Commc'ns Co.*, 924 S.W.2d 632, 639 (Tenn. 1996). The parties cannot confer subject matter jurisdiction on a trial or an appellate court by appearance, plea, consent, silence, or waiver. *State ex rel. Dep't of Soc'l Servs. v. Wright*, 736 S.W.2d 84, 85 n.2 (Tenn. 1987); *Caton v. Pic-Walsh Freight Co.*, 211 Tenn. 334, 338, 364 S.W.2d 931, 933 (1963); *Team Design v. Gottlieb*, 104 S.W.3d 512, 527 (Tenn. Ct. App. 2002).

Judgments or orders entered by courts without subject matter jurisdiction are void. *Shelby County v. City of Memphis*, 211 Tenn. 410, 413, 365 S.W.2d 291, 292 (1963); *Manning v. Feidelson*, 175 Tenn. 576, 577, 136 S.W.2d 510, 510 (1940); *First Am. Trust Co. v. Franklin-Murray Dev. Co., L.P.*, 59 S.W.3d 135, 141 (Tenn. Ct. App. 2001). Thus, when an appellate court determines that a trial court lacked subject matter jurisdiction, it must vacate the judgment and dismiss the case without addressing the substantive merits of the parties' dispute. *J.W. Kelly & Co. v. Conner*, 122 Tenn. 339, 397, 123 S.W. 622, 637 (1909); *Allen v. Day*, 213 S.W.3d 244, 248 (Tenn. Ct. App. 2006).

The only way that a circuit court may acquire subject matter jurisdiction over a case litigated in a general sessions court is through the timely perfection of a de novo appeal. We have already determined that the circuit court did not acquire subject matter jurisdiction over the McCulloughs' de novo appeal in this case because the McCulloughs did not take any of the steps that the law requires to perfect a de novo appeal. They did not file a notice of appeal and a cost bond[10] within ten days following the entry of the July 11, 2005 default judgment. This is not the sort of omission that the courts may overlook because the affected parties are self-represented.

While we sympathize with the trial court's apparent frustration over Discover Bank's lawyer's lackadaisical attitude about this case, the lawyer's conduct cannot provide a jurisdictional basis for a court to act when subject matter jurisdiction does not otherwise exist. The trial court never acquired subject matter jurisdiction over the McCulloughs' de novo appeal from the July 11, 2005 default judgment, and so all of its orders must be set aside.

V.

The orders entered in this case on January 26, 2006 and May 12, 2006 are reversed, and the case is remanded to the trial court with directions to dismiss the McCulloughs' de novo appeal from the general sessions court's July 11, 2005 judgment. The costs of this appeal are taxed in equal proportions to Discover Bank and its surety and to Vience and Sharon McCullough for which execution, if necessary, may issue.

[10] The record contains no indication that the McCulloughs were financially unable to file the required bond.

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WILLIAM C. KOCH, JR., P.J., M.S.